

Bill No. SB 2010

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Proposed Committee Substitute by the Committee on Children and Families

1 A bill to be entitled

2 An act relating to forensic treatment and

3 training; amending s. 916.105, F.S.; revising

4 legislative intent with respect to the

5 treatment or training of defendants who are

6 mentally ill, retarded, or autistic and are

7 committed to the Agency for Persons with

8 Disabilities; providing that it is the policy

9 of the state to use restraint and seclusion

10 only as an emergency safety measure in response

11 to imminent danger; amending s. 916.106, F.S.;

12 providing and revising definitions; amending s.

13 916.107, F.S., relating to the rights of

14 forensic clients; conforming provisions to the

15 transfer of duties from the Developmental

16 Disabilities Program Office within the

17 Department of Children and Family Services to

18 the Agency for Persons with Disabilities;

19 revising provisions governing the involuntary

20 treatment of clients; requiring the

21 coordination of services between the

22 department, the agency, and the Department of

23 Corrections; amending s. 916.1075, F.S.;

24 revising definitions; revising certain

25 prohibitions on sexual misconduct involving

26 employees, volunteers, or interns of the

27 Department of Children and Family Services or

28 the Agency for Persons with Disabilities;

29 deleting an exemption; requiring that notice of

30 sexual misconduct be provided to the inspector

31 general of the agency or department; amending

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1 s. 916.1081, F.S.; providing that an escape or
2 an attempt to escape from a civil or forensic
3 facility constitutes a second-degree felony;
4 amending s. 916.1085, F.S.; providing for
5 certain prohibitions concerning contraband
6 articles to apply to facilities under the
7 supervision or control of the Agency for
8 Persons with Disabilities; conforming a
9 cross-reference; amending s. 916.1091, F.S.;
10 authorizing the use of chemical weapons by
11 agency personnel; amending s. 916.1093, F.S.;
12 authorizing the agency to enter into contracts
13 and adopt rules; requiring that the department
14 and agency adopt rules pertaining to the use of
15 restraint and seclusion; amending s. 916.111,
16 F.S.; revising provisions governing the
17 training of mental health experts; amending s.
18 916.115, F.S.; requiring that the court appoint
19 experts to determine the mental condition of a
20 criminal defendant; requiring that the
21 Department of Children and Family Services
22 annually provide the courts with a list of
23 mental health professionals; amending s.
24 916.12, F.S.; revising provisions governing the
25 evaluation of a defendant's competence to
26 proceed; amending s. 916.13, F.S.; revising
27 conditions under which a defendant may be
28 involuntarily committed for treatment; amending
29 s. 916.145, F.S., relating to charges against a
30 defendant adjudicated incompetent; conforming
31 provisions to changes made by the act; amending

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1 s. 916.15, F.S.; clarifying that the
2 determination of not guilty by reason of
3 insanity is made under the Florida Rules of
4 Criminal Procedure; amending s. 916.16, F.S.;
5 providing for the continuing jurisdiction of
6 the court over a defendant involuntarily
7 committed due to mental illness; amending s.
8 916.17, F.S.; clarifying circumstances under
9 which the court may order the conditional
10 release of a defendant; amending s. 916.301,
11 F.S.; requiring that certain evaluations be
12 conducted by qualified experts; requiring that
13 the Agency for Persons with Disabilities
14 provide the court with a list of available
15 retardation and autism professionals;
16 conforming provisions to the transfer of duties
17 from the Developmental Disabilities Program
18 Office within the Department of Children and
19 Family Services to the agency; amending s.
20 916.3012, F.S.; clarifying provisions governing
21 the determination of a defendant's mental
22 competence to proceed; amending s. 916.302,
23 F.S., relating to the involuntary commitment of
24 a defendant; conforming provisions to the
25 transfer of duties from the Developmental
26 Disabilities Program Office within the
27 Department of Children and Family Services to
28 the agency; requiring that the department and
29 agency submit an evaluation to the court before
30 the transfer of a defendant from one civil or
31 forensic facility to another; amending s.

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1 916.3025, F.S.; clarifying that the committing
2 court retains jurisdiction over a defendant
3 placed on conditional release; providing for
4 the transfer of continuing jurisdiction to
5 another court where the defendant resides;
6 amending s. 916.303, F.S.; clarifying
7 provisions governing the dismissal of charges
8 against a defendant found to be incompetent to
9 proceed due to retardation or autism; amending
10 s. 916.304, F.S.; providing for the conditional
11 release of a defendant to a civil facility;
12 amending ss. 921.137 and 985.223, F.S.,
13 relating to provisions governing the imposition
14 of the death sentence upon a mentally retarded
15 defendant and the determination of incompetency
16 in cases involving juvenile delinquency;
17 conforming provisions to the transfer of duties
18 from the Developmental Disabilities Program
19 Office within the Department of Children and
20 Family Services to the Agency for Persons with
21 Disabilities; amending ss. 287.057, 408.036,
22 943.0585, and 943.059, F.S.; conforming
23 cross-references; providing an effective date.

25 Be It Enacted by the Legislature of the State of Florida:

27 Section 1. Section 916.105, Florida Statutes, is
28 amended to read:

29 916.105 Legislative intent.--

30 (1) It is the intent of the Legislature that the
31 Department of Children and Family Services and the Agency for

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1 Persons with Disabilities, as appropriate, establish, locate,
2 and maintain separate and secure forensic facilities and
3 programs for the treatment or training of defendants who have
4 been ~~are~~ charged with a felony and who have been found to be
5 incompetent to proceed due to their mental illness, mental
6 retardation, or autism, or who have been acquitted of a felony
7 ~~felonies~~ by reason of insanity, and who, while still under the
8 jurisdiction of the committing court, are committed to the
9 department or agency under the provisions of this chapter.
10 Such ~~The separate, secure~~ facilities shall be sufficient to
11 accommodate the number of defendants committed under the
12 conditions noted above.7 Except for those defendants found by
13 the department or agency to be appropriate for treatment or
14 training in a civil ~~treatment~~ facility or program pursuant to
15 subsection (3), forensic. ~~Such secure~~ facilities shall be
16 designed and administered so that ingress and egress, together
17 with other requirements of this chapter, may be strictly
18 controlled by staff responsible for security in order to
19 protect the defendant, facility personnel, other clients, and
20 citizens in adjacent communities.

21 (2) It is further the intent of the Legislature that
22 treatment or training programs for defendants who are found to
23 be mentally ill, retarded, or autistic and are involuntarily
24 committed to the department or agency, and who are still under
25 the jurisdiction of the committing court, be provided in ~~such~~
26 a manner, subject to security requirements and other mandates
27 of this chapter, as to ensure the rights of the defendants as
28 provided in this chapter.

29 (3) It is also the intent of the Legislature that
30 evaluation and services to defendants who are mentally ill,
31 retarded, or autistic be provided in community settings, in

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community residential facilities, or in civil, ~~nonforensic~~
facilities, whenever this is a feasible alternative to
treatment or training in a state forensic facility.

(4) It is the policy of this state that the use of
restraint and seclusion on clients is justified only as an
emergency safety measure to be used in response to imminent
danger to the client or others. It is, therefore, the intent
of the Legislature to achieve an ongoing reduction in the use
of restraint and seclusion on persons who are committed to a
civil or forensic facility under this chapter.

Section 2. Section 916.106, Florida Statutes, is
amended to read:

916.106 Definitions.--For the purposes of this
chapter:

(1) "Agency" means the Agency for Persons with
Disabilities. The agency is responsible for training forensic
clients who are developmentally disabled due to mental
retardation or autism and have been determined incompetent to
proceed.

(2)(1) "Autism" has the same meaning as in s. 393.063.
~~means a pervasive, neurologically based developmental
disability of extended duration which causes severe learning,
communication, and behavior disorders, with the age of onset
of autism occurring during infancy or childhood. Individuals
with autism exhibit impairment in reciprocal social
interaction, impairment in verbal and nonverbal communication
and imaginative ability, and a markedly restricted repertoire
of activities and interests.~~

(3)(2) "Chemical weapon" means any shell, cartridge,
bomb, gun, or other device capable of emitting
chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any

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1 derivatives thereof in any form, or any other agent with
2 lacrimatory properties, and shall include products such as
3 that commonly known as "mace."

4 ~~(4)(3)~~ "Civil facility" means:

5 (a) A mental health facility established within the
6 department or by contract with the department to serve
7 individuals committed pursuant to chapter 394 and those
8 defendants committed pursuant to this chapter who do not
9 require the security provided in a forensic facility; or-

10 (b) An intermediate care facility for the
11 developmentally disabled, a foster care facility, a group home
12 facility, or a supported living setting, as defined in s.
13 393.063, designated by the agency to serve those defendants
14 who do not require the security provided in a forensic
15 facility.

16 ~~(5)(4)~~ "Court" means the circuit court.

17 (6) "Defendant" means an adult, or a juvenile who is
18 prosecuted as an adult, who has been arraigned and charged
19 with a felony offense under the laws of this state.

20 ~~(7)(5)~~ "Department" means the Department of Children
21 and Family Services. The department is responsible for the
22 treatment of forensic clients who have been determined
23 incompetent to proceed due to mental illness or who have been
24 acquitted of a felony by reason of insanity.

25 ~~(8)(6)~~ "Express and informed consent" or "consent"
26 means consent given voluntarily in writing after a
27 conscientious and sufficient explanation and disclosure of the
28 purpose of the proposed treatment, the common side effects of
29 the treatment, if any, the expected duration of the treatment,
30 and any alternative treatment available.

31 ~~(9)(7)~~ "Forensic client" or "client" means any

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defendant who has been ~~is mentally ill, retarded, or autistic~~
~~and who is~~ committed to the department or agency pursuant to
s. 916.13, s. 916.15, or s. 916.302. ~~this chapter and:~~

~~(a) Who has been determined to need treatment for a
 mental illness or training for retardation or autism;~~

~~(b) Who has been found incompetent to proceed on a
 felony offense or has been acquitted of a felony offense by
 reason of insanity;~~

~~(c) Who has been determined by the department to:~~

~~1. Be dangerous to himself or herself or others; or~~

~~2. Present a clear and present potential to escape;~~

~~and~~

~~(d) Who is an adult or a juvenile prosecuted as an
 adult.~~

~~(10)(8)~~ "Forensic facility" means a separate and
 secure facility established within the department or agency to
 serve forensic clients. A ~~Such~~ separate and secure facility
means a facilities shall be security-grade building for the
purpose of separately housing persons with mental illness from
persons with retardation or autism and separately housing
persons who have been involuntarily committed pursuant to this
chapter from nonforensic residents ~~buildings located on~~
~~grounds distinct in location from other facilities for persons~~
~~who are mentally ill. The Florida State Hospital shall not be~~
~~required to maintain separate facilities for mentally ill,~~
~~retarded, or autistic defendants who are found incompetent to~~
~~proceed or who are acquitted of a criminal offense by reason~~
~~of insanity.~~

~~(11)(9)~~ "Incompetent to proceed" means unable to
 proceed at any material stage of a criminal proceeding, which
 shall include trial of the case, pretrial hearings involving

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1 questions of fact on which the defendant might be expected to
2 testify, entry of a plea, proceedings for violation of
3 probation or violation of community control, sentencing, and
4 hearings on issues regarding a defendant's failure to comply
5 with court orders or conditions or other matters in which the
6 mental competence of the defendant is necessary for a just
7 resolution of the issues being considered.

8 (12)(10) "Institutional security personnel" means the
9 staff of forensic facilities ~~staff members~~ who meet or exceed
10 the requirements of s. 943.13 and who are responsible for
11 providing security, protecting ~~for protection of~~ clients and
12 personnel, enforcing ~~for the enforcement of~~ rules, preventing
13 and investigating ~~for prevention and investigation of~~
14 unauthorized activities, and ~~for~~ safeguarding the interests of
15 citizens in the surrounding communities.

16 (13)(11) "Mental illness" means an impairment of the
17 emotional processes that exercise conscious control of one's
18 actions, or of the ability to perceive or understand reality,
19 which impairment substantially interferes with a defendant's
20 ability to meet the ordinary demands of living. For the
21 purposes of this chapter, the term does not apply to
22 defendants with mental retardation or autism ~~who are solely~~
23 ~~retarded or autistic~~, and does not include intoxication or
24 conditions manifested only by antisocial behavior or substance
25 abuse impairment.

26 (14)(a) "Restraint" means a physical device, method,
27 or drug used to control behavior. A physical restraint is any
28 manual method or physical or mechanical device, material, or
29 equipment attached or adjacent to the individual's body so
30 that he or she cannot easily remove the restraint and which
31 restricts freedom of movement or normal access to one's body.

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(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement. Physically holding a person during a procedure to forcibly administer such medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(15)(12) "Retardation" has the same meaning as in s. 393.063. means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.

(16) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically

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1 situated, so as to prevent the person from leaving the room or
2 area. For purposes of this chapter, the term does not mean
3 isolation due to a person's medical condition or symptoms, the
4 confinement in state mental health treatment facilities to a
5 bedroom or area during normal hours of sleep when there is not
6 an active order for seclusion, or confinement during an
7 emergency such as a riot or hostage situation when clients may
8 be temporarily placed in their rooms for their own safety.

9 (17)(13) "Social service professional," ~~for the~~
10 ~~purposes of part III,~~ means a person whose minimum
11 qualifications include a bachelor's degree and at least 2
12 years of social work, clinical practice, special education,
13 habilitation, or equivalent experience working directly with
14 persons with retardation, autism, or other developmental
15 disabilities.

16 Section 3. Section 916.107, Florida Statutes, is
17 amended to read:

18 916.107 Rights of forensic clients.--

19 (1) RIGHT TO INDIVIDUAL DIGNITY.--

20 (a) The policy of the state is that the individual
21 dignity of the client shall be respected at all times and upon
22 all occasions, including any occasion when the forensic client
23 is detained, transported, or treated. Clients with mental
24 illness, retardation, or autism ~~Defendants who are mentally~~
25 ~~ill, retarded, or autistic and~~ who are charged with committing
26 felonies shall receive appropriate treatment or training. In
27 a criminal case involving a client ~~defendant~~ who has been
28 adjudicated incompetent to proceed or not guilty by reason of
29 insanity, a jail may be used as an emergency facility for up
30 to 15 days following ~~from~~ the date the department or agency
31 receives a completed copy of the court commitment order

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1 containing all ~~the~~ documentation required by Rules 3.212 and
 2 3.217, Florida Rules of Criminal Procedure. For a forensic
 3 client ~~defendant who is mentally ill, retarded, or autistic,~~
 4 who is held in a jail awaiting admission to a facility of the
 5 department or agency, ~~and who has been adjudicated incompetent~~
 6 ~~to proceed or not guilty by reason of insanity,~~ evaluation and
 7 treatment or training may ~~shall~~ be provided in the jail by the
 8 local community mental health provider ~~public receiving~~
 9 ~~facility~~ for mental health services, ~~or~~ by the developmental
 10 disabilities ~~services~~ program for persons with retardation or
 11 autism, the client's physician or psychologist, or any other
 12 appropriate program until the client is transferred to a civil
 13 or forensic facility ~~the custody of the department.~~

14 (b) Forensic clients ~~Mentally ill, retarded, or~~
 15 ~~autistic defendants who are committed to the department~~
 16 ~~pursuant to this chapter and~~ who are initially placed in, or
 17 subsequently transferred to, a civil facility as described in
 18 part I of chapter 394 or to a residential facility as
 19 described in chapter 393 shall have the same rights as other
 20 persons committed to these facilities for as long as they
 21 remain there.

22 (2) RIGHT TO TREATMENT.--

23 (a) The policy of the state is that neither the
 24 department nor the agency shall ~~not~~ deny treatment or training
 25 to any client and that no services shall be delayed ~~at a~~
 26 ~~facility~~ because the forensic client is indigent pursuant to
 27 s. 27.52 and presently unable to pay. However, every
 28 reasonable effort to collect appropriate reimbursement for the
 29 cost of providing services to clients able to pay for the
 30 services, including reimbursement from insurance or other
 31 third-party payments, shall be made by facilities providing

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services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each forensic client shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

(c) Every forensic client ~~committed pursuant to this act~~ shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility.

(d) Not more than 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client ~~in a forensic facility~~ refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team ~~at the forensic facility~~ for the appropriate care of the client ~~and the safety of the client or others~~, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period,

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1 the client has not given express and informed consent to the
2 treatment initially refused, the administrator or designee of
3 the civil or forensic facility shall, within 48 hours,
4 excluding weekends and legal holidays, petition the committing
5 court or the circuit court serving the county in which the
6 facility is located, at the option of the facility
7 administrator or designee, for an order authorizing the
8 continued treatment of the client. In the interim, the need
9 for treatment shall be reviewed every 48 hours and may be
10 continued without the consent of the client upon the continued
11 written order of a physician who has determined that the
12 emergency situation continues to present a danger to the
13 safety of the client or others.

14 2. In a situation other than an emergency situation,
15 the administrator or designee of the ~~forensic~~ facility shall
16 petition the court for an order authorizing necessary and
17 essential ~~the~~ treatment for ~~to~~ the client. The order shall
18 allow such treatment for a period not to exceed 90 days
19 following ~~from~~ the date of the entry of the order. Unless the
20 court is notified in writing that the client has provided
21 express and informed consent in writing or that the client has
22 been discharged by the committing court, the administrator or
23 designee shall, prior to the expiration of the initial 90-day
24 order, petition the court for an order authorizing the
25 continuation of treatment for another 90-day period. This
26 procedure shall be repeated until the client provides consent
27 or is discharged by the committing court.

28 3. At the hearing on the issue of whether the court
29 should enter an order authorizing treatment for which a client
30 was unable or ~~has~~ refused to give express and informed
31 consent, the court shall determine by clear and convincing

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evidence that the client has mental illness, retardation, or autism ~~is mentally ill, retarded, or autistic as defined in this chapter~~, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

- a. The client's expressed preference regarding treatment;
- b. The probability of adverse side effects;
- c. The prognosis without treatment; and
- d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric

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1 medical procedures, and prior to performing the procedure,
2 written permission shall be obtained from the client, if the
3 client is legally competent, from the parent or guardian of a
4 minor client, or from the guardian of an incompetent client.
5 The administrator or designee of the forensic facility or a
6 designated representative may, with the concurrence of the
7 client's attending physician, authorize emergency surgical or
8 nonpsychiatric medical treatment if such treatment is deemed
9 lifesaving or for a situation threatening serious bodily harm
10 to the client and permission of the client or the client's
11 guardian could not ~~cannot~~ be obtained before provision of the
12 needed treatment.

13 (4) QUALITY OF TREATMENT.--

14 (a) Each forensic client ~~committed pursuant to this~~
15 ~~chapter~~ shall receive treatment or training suited to the
16 client's needs, which shall be administered skillfully,
17 safely, and humanely with full respect for the client's
18 dignity and personal integrity. Each client shall receive
19 such medical, vocational, social, educational, and
20 rehabilitative services as the client's condition requires to
21 bring about a return to court for disposition of charges or a
22 return to the community. In order to achieve this goal, the
23 department and the agency shall coordinate their services with
24 each other, the Department of Corrections, ~~is directed to~~
25 ~~coordinate the services of the Mental Health Program Office~~
26 ~~and the Developmental Disabilities Program Office with all~~
27 ~~other programs of the department~~ and other appropriate state
28 agencies.

29 (b) Clients shall be free from the unnecessary use of
30 restraint and seclusion. Restraints shall be employed only in
31 emergencies or to protect the client or others from imminent

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1 injury. Restraint or seclusion may not be employed as
2 punishment or for the convenience of staff. Any instance of
3 the use of restraint or seclusion must be documented in the
4 facility record of the client.

5 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

6 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
7 ~~provisions of this chapter~~ has the right to communicate freely
8 and privately with persons outside the facility unless it is
9 determined that such communication is likely to be harmful to
10 the client or others. Clients shall have the right to contact
11 and to receive communication from their attorneys at any
12 reasonable time.

13 ~~(a)(b)~~ Each forensic client ~~committed under the~~
14 ~~provisions of this chapter~~ shall be allowed to receive, send,
15 and mail sealed, unopened correspondence; and no client's
16 incoming or outgoing correspondence shall be opened, delayed,
17 held, or censored by the facility unless there is reason to
18 believe that it contains items or substances which may be
19 harmful to the client or others, in which case the
20 administrator or designee may direct reasonable examination of
21 such mail and may regulate the disposition of such items or
22 substances. "Correspondence" shall not include parcels or
23 packages. Forensic facilities are authorized to promulgate
24 reasonable institutional policies to provide for the
25 inspection of parcels or packages and for the removal of
26 contraband items for health or security reasons prior to the
27 contents being given to a client.

28 ~~(b)(c)~~ If a client's right to communicate is
29 restricted by the administrator, written notice of such
30 restriction and the duration of the restriction shall be
31 served on the client or his or her legal guardian or

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1 representatives, and such restriction shall be recorded on the
2 client's clinical record with the reasons therefor. The
3 restriction of a client's right to communicate shall be
4 reviewed at least every 7 days.

5 ~~(c)(d)~~ Each forensic facility shall establish
6 reasonable institutional policies governing visitors, visiting
7 hours, and the use of telephones by clients in the least
8 restrictive manner possible.

9 ~~(d)(e)~~ Each forensic client ~~committed pursuant to this~~
10 ~~chapter~~ shall have ready access to a telephone in order to
11 report an alleged abuse. The facility or program staff shall
12 orally and in writing inform each client of the procedure for
13 reporting abuse and shall present the information in a
14 language the client understands. A written copy of that
15 procedure, including the telephone number of the central abuse
16 hotline and reporting forms, shall be posted in plain view.

17 ~~(e)(f)~~ The department's or agency's forensic
18 facilities shall develop policies providing a procedure for
19 reporting abuse. Facility staff shall be required, as a
20 condition of employment, to become familiar with the
21 procedures for the reporting of abuse.

22 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF
23 CLIENTS.--A forensic client's right to possession of clothing
24 and personal effects shall be respected. The department or
25 agency by rule, or the administrator of any forensic facility
26 by written institutional policy, may declare certain items to
27 be hazardous to the health or welfare of clients or others or
28 to the operation of the facility. Such items may be
29 restricted from introduction into the facility or may be
30 restricted from being in a client's possession. The
31 administrator or designee may take temporary custody of such

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effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.--A forensic client ~~committed pursuant to this chapter~~ who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client's legal guardian or, if the client is deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary

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1 or director of the department or agency, deems it necessary
2 for treatment of the client, maintenance of adequate records,
3 compilation of treatment data, or evaluation of programs.

4 4. For statistical and research purposes if the
5 information is abstracted in such a way as to protect the
6 identity of individuals.

7 5. If a client receiving services ~~pursuant to this~~
8 ~~chapter~~ has declared an intention to harm other persons. ~~When~~
9 ~~such a declaration has been made~~, the administrator shall
10 authorize the release of sufficient information to provide
11 adequate warning to the person threatened with harm by the
12 client, and to the committing court, the state attorney, and
13 the attorney representing the client.

14 6. To the parent or next of kin of a client ~~mentally~~
15 ~~ill, retarded, or autistic person~~ who is committed to, or is
16 being served by, a facility or program when such information
17 is limited to that person's service plan and current physical
18 and mental condition. Release of such information shall be in
19 accordance with the code of ethics of the profession involved
20 and must comply with all state and federal laws and
21 regulations pertaining to the release of personal health
22 information.

23 (b) Notwithstanding other provisions of this
24 subsection, the department or agency may request or receive
25 from or provide to any of the following entities client
26 information to facilitate treatment, habilitation,
27 rehabilitation, and continuity of care of any forensic client:

28 1. The Social Security Administration and the United
29 States Department of Veterans Affairs;

30 2. Law enforcement agencies, state attorneys, defense
31 attorneys, and judges in regard to the client's status;

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1 3. Jail personnel in the jail in ~~to~~ which a client may
2 be housed ~~returned~~; and

3 4. Community agencies and others expected to provide
4 followup care to the client upon the client's return to the
5 community.

6 (c) The department or agency may provide notice to any
7 client's next of kin or first representative regarding any
8 serious medical illness or the death of the client.

9 (d)1. Any law enforcement agency, facility, or other
10 governmental agency that receives information pursuant to this
11 subsection shall maintain the confidentiality of such
12 information except as otherwise provided herein.

13 2. Any agency or private practitioner who acts in good
14 faith in releasing information pursuant to this subsection is
15 not subject to civil or criminal liability for such release.

16 (9) HABEAS CORPUS.--

17 (a) At any time, and without notice, a forensic client
18 detained by a facility, or a relative, friend, guardian,
19 representative, or attorney on behalf of such client, may
20 petition for a writ of habeas corpus to question the cause and
21 legality of such detention and request that the committing
22 court issue a writ for release. Each client ~~committed~~
23 ~~pursuant to this chapter~~ shall receive a written notice of the
24 right to petition for a writ of habeas corpus.

25 (b) A client or his or her legal guardian or
26 representatives or attorney may file a petition in the circuit
27 court in the county where the client is committed alleging
28 that the client is being unjustly denied a right or privilege
29 granted herein or that a procedure authorized herein is being
30 abused. Upon the filing of such a petition, the circuit court
31 shall have the authority to conduct a judicial inquiry and to

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1 issue any appropriate order to correct an abuse of the
2 provisions of this chapter.

3 (10) TRANSPORTATION.--

4 (a) The sheriff shall consult with the governing board
5 of the county as to the most appropriate and cost-effective
6 means of transportation for forensic clients who have been
7 committed for treatment or training. Such consultation shall
8 include, but is not limited to, consideration of the cost to
9 the county of transportation performed by sheriff's ~~department~~
10 personnel as opposed to transportation performed by other
11 means and, if sheriff's ~~department~~ personnel are to be used
12 for transportation, the effect such use will have, if any, on
13 service delivery levels of the sheriff's road patrol. After
14 such consultation with the governing board of the county, the
15 sheriff shall determine the most appropriate and
16 cost-effective means of transportation for forensic clients
17 committed for treatment or training.

18 (b) The governing board of each county is authorized
19 to contract with private transport companies for the
20 transportation of such clients to and from a facility.

21 (c) Any company that transports a client pursuant to
22 this section is considered an independent contractor and is
23 solely liable for the safe and dignified transportation of the
24 client. Any transport company that contracts with the
25 governing board of a county for the transport of clients as
26 provided for in this section shall be insured and provide no
27 less than \$100,000 in liability insurance with respect to the
28 transportation of the clients.

29 (d) Any company that contracts with a governing board
30 of a county to transport clients shall comply with the
31 applicable rules of the department or agency to ensure the

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safety and dignity of the clients.

(11) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency which are provided under this chapter shall be ~~by this act is~~ liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this chapter ~~act~~ is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client to or from a facility. However, this subsection does not relieve any person from liability if he or she is negligent.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 916.1075, Florida Statutes, are amended to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.--

(1) As used in this section, the term:

(a) "Covered person" means an ~~"employee" includes any paid staff member,~~ volunteer, or intern of the department or agency; any person under contract with the department or agency; and any person providing care or support to a forensic client on behalf of the department, the agency, or their ~~its~~ providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks,

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1 or the clothing covering them, of a person, or forcing or
2 enticing a person to touch the perpetrator.

3 4. Intentionally masturbating in the presence of
4 another person.

5 5. Intentionally exposing the genitals in a lewd or
6 lascivious manner in the presence of another person.

7 6. Intentionally committing any other sexual act that
8 does not involve actual physical or sexual contact with the
9 victim, including, but not limited to, sadomasochistic abuse,
10 sexual bestiality, or the simulation of any act involving
11 sexual activity in the presence of a victim.

12 (c) "Sexual misconduct" means any sexual activity
13 between a covered person ~~an employee~~ and a forensic client in
14 the custody of the department or agency, regardless of the
15 consent of the client. The term does not include an act done
16 for a bona fide medical purpose or an internal search
17 conducted in the lawful performance of duty by a covered
18 person ~~an employee~~.

19 (2) A covered person ~~An employee~~ who engages in sexual
20 misconduct with a forensic client who resides in a civil or
21 forensic facility commits a felony of the second degree,
22 punishable as provided in s. 775.082, s. 775.083, or s.
23 775.084. Such person ~~An employee~~ may be found guilty of
24 violating this subsection without having committed the crime
25 of sexual battery.

26 (3) The consent of a forensic ~~the~~ client to sexual
27 activity is not a defense to prosecution under this section.

28 (4) This section does not apply to a covered person ~~an~~
29 ~~employee~~ who:

30 (a) Is legally married to the client; or

31 (b) Has no reason to believe that the person with whom

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1 the covered person ~~employee~~ engaged in sexual misconduct is a
2 client receiving services as described in subsection (2).

3 (5) A covered person ~~An employee~~ who witnesses sexual
4 misconduct, or who otherwise knows or has reasonable cause to
5 suspect that a person has engaged in sexual misconduct, shall
6 immediately report the incident to the department's central
7 abuse hotline and to the appropriate local law enforcement
8 agency. The covered person ~~Such employee~~ shall also prepare,
9 date, and sign an independent report that specifically
10 describes the nature of the sexual misconduct, the location
11 and time of the incident, and the persons involved. For an
12 allegation pertaining to a forensic client committed to the
13 agency, the covered person ~~employee~~ shall deliver the report
14 to the supervisor or program director, who shall provide
15 copies to the agency's ~~is responsible for providing copies to~~
16 ~~the department's~~ inspector general. For an allegation
17 pertaining to a forensic client committed to the department,
18 the covered person shall deliver the report to the supervisor
19 or program director, who shall provide copies to the
20 department's inspector general. The inspector general shall
21 immediately conduct an appropriate administrative
22 investigation, and, if there is probable cause to believe that
23 sexual misconduct has occurred, the inspector general shall
24 notify the state attorney in the circuit in which the incident
25 occurred.

26 Section 5. Section 916.1081, Florida Statutes, is
27 amended to read:

28 916.1081 Escape from program; penalty.--

29 (1) A forensic client who is ~~A defendant~~ involuntarily
30 committed to the department or agency, who is in the custody
31 of the department or agency, and ~~under the provisions of this~~

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1 ~~chapter~~ who escapes or attempts to escape from a civil or
2 forensic facility ~~or program~~ commits a felony of the second
3 degree, punishable as provided in s. 775.082, s. 775.083, or
4 s. 775.084.

5 (2) A person who is involuntarily committed to the
6 department or the agency because of an active previous
7 sentence, who remains in the custody of the Department of
8 Corrections, and who escapes or attempts to escape from a
9 facility or program of the Department of Corrections commits a
10 felony of the second degree, punishable as provided in s.
11 944.40.

12 Section 6. Subsection (1) and paragraph (b) of
13 subsection (2) of section 916.1085, Florida Statutes, are
14 amended to read:

15 916.1085 Introduction or removal of certain articles
16 unlawful; penalty.--

17 (1)(a) Except as authorized by law or as specifically
18 authorized by the person in charge of a facility, it is
19 unlawful to introduce into or upon the grounds of any facility
20 under the supervision or control of the department or agency,
21 or to take or attempt to take or send therefrom, any of the
22 following articles, which are ~~hereby~~ declared to be contraband
23 for the purposes of this section:

24 1. Any intoxicating beverage or beverage which causes
25 or may cause an intoxicating effect;

26 2. Any controlled substance as defined in chapter 893;

27 3. Any firearm or deadly weapon; or

28 4. Any other item as determined by the department or
29 the agency, and as designated by ~~departmental~~ rule or ~~by the~~
30 ~~administrator of any facility, and designated~~ by written
31 institutional policies, to be hazardous to the welfare of

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1 ~~clients~~ ~~patients~~ or the operation of the facility.

2 (b) It is unlawful to transmit to, attempt to transmit
3 to, or cause or attempt to cause to be transmitted to or
4 received by any client of any facility under the supervision
5 or control of the department or agency any article or thing
6 declared by this section to be contraband, at any place that
7 ~~which~~ is outside of the grounds of such facility, except as
8 authorized by law or as specifically authorized by the person
9 in charge of such facility.

10 (2)

11 (b) These provisions shall be enforced by
12 institutional security personnel as defined in s. 916.106(12)
13 ~~s. 916.106(10)~~ or by a law enforcement officer as defined in
14 s. 943.10.

15 Section 7. Section 916.1091, Florida Statutes, is
16 amended to read:

17 916.1091 Duties, functions, and powers of
18 institutional security personnel.--In case of emergency, and
19 when necessary to provide protection and security to any
20 client, to the personnel, equipment, buildings, or grounds of
21 a department or agency facility, or to citizens in the
22 surrounding community, institutional security personnel may,
23 when authorized by the administrator of the facility or her or
24 his designee when the administrator is not present, use a
25 chemical weapon against a patient housed in a forensic
26 facility. However, such weapon shall be used only to the
27 extent necessary to provide ~~such~~ protection and security.
28 Under no circumstances shall any ~~such~~ officer carry a chemical
29 weapon on her or his person except during the period of the
30 emergency for which its use was authorized. All chemical
31 weapons shall be placed in secure storage when their use is

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1 not authorized as provided in this section.

2 Section 8. Section 916.1093, Florida Statutes, is
3 amended to read:

4 916.1093 Operation and administration; rules.--

5 (1) The department or agency may ~~is authorized to~~
6 enter into contracts and do such things as may be necessary
7 and incidental to assure compliance with and to carry out the
8 provisions of this chapter in accordance with the stated
9 legislative intent.

10 (2) The department or agency may ~~has authority to~~
11 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
12 the provisions of this chapter. Rules adopted under this
13 subsection must include provisions governing the use of
14 restraint and seclusion which are consistent with recognized
15 best practices and professional judgment; prohibit inherently
16 dangerous restraint or seclusion procedures; establish
17 limitations on the use and duration of restraint and
18 seclusion; establish measures to ensure the safety of program
19 participants and staff during an incident of restraint or
20 seclusion; establish procedures for staff to follow before,
21 during, and after incidents of restraint or seclusion;
22 establish professional qualifications of and training for
23 staff who may order or be engaged in the use of restraint or
24 seclusion; and establish mandatory reporting, data-collection,
25 and data-dissemination procedures and requirements. Rules
26 adopted under this subsection must require that each instance
27 of the use of restraint or seclusion be documented in the
28 facility's record of the client.

29 Section 9. Section 916.111, Florida Statutes, is
30 amended to read:

31 916.111 Training of mental health experts.--The

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1 evaluation of defendants for competency to proceed or for
2 sanity at the time of the commission of the offense shall be
3 conducted in such a way as to ensure uniform application of
4 the criteria enumerated in Rules 3.210 and 3.216, Florida
5 Rules of Criminal Procedure. The department shall develop,
6 and may contract with accredited institutions:

7 (1) To provide:

8 (a) A plan for training ~~community~~ mental health
9 professionals to perform forensic evaluations and to
10 standardize the criteria and procedures to be used in these
11 evaluations;

12 (b) Clinical protocols and procedures based upon the
13 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
14 Procedure; ~~and~~

15 (c) Training for ~~community~~ mental health professionals
16 in the application of these protocols and procedures in
17 performing forensic evaluations and providing reports to the
18 courts; and

19 (2) To compile and maintain the necessary information
20 for evaluating the success of this program, including the
21 number of persons trained, the cost of operating the program,
22 and the effect on the quality of forensic evaluations as
23 measured by appropriateness of admissions to state forensic
24 facilities and to community-based care programs.

25 Section 10. Section 916.115, Florida Statutes, is
26 amended to read:

27 916.115 Appointment of experts.--

28 ~~(1)(a) Annually, the department shall provide the~~
29 ~~courts with a list of mental health professionals who have~~
30 ~~completed approved training as experts.~~

31 ~~(b)~~ The court shall ~~may~~ appoint no more than three

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1 experts to determine ~~issues of~~ the mental condition of a
2 defendant in a criminal case, including ~~the issues of~~
3 competency to proceed, insanity, ~~and~~ involuntary
4 ~~hospitalization or placement, and treatment. The panel of~~
5 experts ~~An expert~~ may evaluate the defendant in jail or in
6 another appropriate local facility or in a facility of the
7 Department of Corrections.

8 (a)(c) To the extent possible, the ~~an~~ appointed
9 experts ~~expert~~ shall have completed forensic evaluator
10 training approved by the department and shall be ~~either~~ a
11 psychiatrist, licensed psychologist, or physician.

12 (b) The department shall maintain and provide the
13 courts annually with a list of available mental health
14 professionals who have completed the approved training as
15 experts.

16 (2) ~~Expert witnesses appointed by the court to~~
17 ~~evaluate the mental condition of a defendant in a criminal~~
18 ~~case shall be allowed reasonable fees for services rendered as~~
19 ~~evaluators of competence or sanity and as witnesses.~~

20 (a)1. The court shall pay for any expert that it
21 appoints by court order, upon motion of counsel for the
22 defendant or the state or upon its own motion. If the defense
23 or the state retains an expert and waives the confidentiality
24 of the expert's report, the court may pay for no more than two
25 additional experts appointed by court order. If an expert
26 appointed by the court upon motion of counsel for the
27 defendant specifically to evaluate the competence of the
28 defendant to proceed also addresses ~~in his or her evaluation~~
29 issues related to sanity as an affirmative defense, the court
30 shall pay only for that portion of the expert's fees relating
31 to the evaluation on competency to proceed, and the balance of

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1 the fees shall be chargeable to the defense.

2 (a)2- Pursuant to s. 29.006, the office of the public
3 defender shall pay for any expert retained by the office.

4 (b)3- Pursuant to s. 29.005, the office of the state
5 attorney shall pay for any expert retained by the office ~~and-~~
6 ~~Notwithstanding subparagraph 1., the office of the state~~
7 ~~attorney shall pay~~ for any expert whom the office retains and
8 whom the office moves the court to appoint in order to ensure
9 that the expert has access to the defendant.

10 (c)4- An expert retained by the defendant who is
11 represented by private counsel appointed under s. 27.5303
12 shall be paid by the Justice Administrative Commission.

13 (d)5- An expert retained by a defendant who is
14 indigent for costs as determined by the court and who is
15 represented by private counsel, other than private counsel
16 appointed under s. 27.5303, on a fee or pro bono basis, or who
17 is representing himself or herself, shall be paid by the
18 Justice Administrative Commission from funds specifically
19 appropriated for these expenses.

20 (e)(b) State employees shall be paid expenses pursuant
21 to s. 112.061.

22 (f)(c) The fees shall be taxed as costs in the case.

23 (g)(d) In order for an expert to be paid for the
24 services rendered, the expert's report and testimony must
25 explicitly address each of the factors and follow the
26 procedures set out in this chapter and in the Florida Rules of
27 Criminal Procedure.

28 Section 11. Subsections (1) and (2) of section 916.12,
29 Florida Statutes, are amended to read:

30 916.12 Mental competence to proceed.--

31 (1) A defendant is incompetent to proceed within the

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meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s.

916.115 ~~An expert~~ shall first determine whether the defendant

~~person~~ is mentally ill and, if so, consider the factors

related to the issue of whether the defendant meets the

criteria for competence to proceed as described in subsection

~~(1); that is, whether the defendant has sufficient present~~

~~ability to consult with counsel with a reasonable degree of~~

~~rational understanding and whether the defendant has a~~

~~rational, as well as factual, understanding of the pending~~

~~proceedings~~. A defendant must be evaluated by no fewer than

two experts before the court commits the defendant or takes

other action authorized by this chapter or the Florida Rules

of Criminal Procedure, except if one expert finds that the

defendant is incompetent to proceed and the parties stipulate

to that finding, the court may commit the defendant or take

other action authorized by this chapter or the rules without

further evaluation or hearing, or the court may appoint no

more than two additional experts to evaluate the defendant.

Notwithstanding any stipulation by the state and the

defendant, the court may require a hearing with testimony from

the expert or experts before ordering the commitment of a

defendant.

Section 12. Section 916.13, Florida Statutes, is

amended to read:

916.13 Involuntary commitment of defendant adjudicated

incompetent.--

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1 (1) Every defendant who is charged with a felony and
2 who is adjudicated incompetent to proceed, ~~pursuant to the~~
3 ~~applicable Florida Rules of Criminal Procedure~~, may be
4 involuntarily committed for treatment upon a finding by the
5 court of clear and convincing evidence that:

6 (a) The defendant is mentally ill and because of the
7 mental illness:

8 1. The defendant is manifestly incapable of surviving
9 alone or with the help of willing and responsible family or
10 friends, including available alternative services, and,
11 without treatment, the defendant is likely to suffer from
12 neglect or refuse to care for herself or himself and such
13 neglect or refusal poses a real and present threat of
14 substantial harm to the defendant's well-being; or ~~and~~

15 2. There is a substantial likelihood that in the near
16 future the defendant will inflict serious bodily harm on
17 herself or himself or another person, as evidenced by recent
18 behavior causing, attempting, or threatening such harm;

19 (b) All available, less restrictive treatment
20 alternatives, including treatment in community residential
21 facilities or community inpatient or outpatient settings,
22 which would offer an opportunity for improvement of the
23 defendant's condition have been judged to be inappropriate;
24 and

25 (c) There is a substantial probability that the mental
26 illness causing the defendant's incompetence will respond to
27 treatment and the defendant will regain competency to proceed
28 in the reasonably foreseeable future.

29 (2) A defendant who has been charged with a felony and
30 who has been adjudicated incompetent to proceed due to mental
31 illness, and who meets the criteria for involuntary commitment

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1 to the department under the provisions of this chapter, may be
2 committed to the department, and the department shall retain
3 and treat the defendant. No later than 6 months after the
4 date of admission and ~~or~~ at the end of any period of extended
5 commitment, or at any time the administrator or designee shall
6 have determined that the defendant has regained competency to
7 proceed or no longer meets the criteria for continued
8 commitment, the administrator or designee shall file a report
9 with the court pursuant to the applicable Florida Rules of
10 Criminal Procedure.

11 Section 13. Section 916.145, Florida Statutes, is
12 amended to read:

13 916.145 ~~Adjudication of incompetency due to mental~~
14 ~~illness.~~ Dismissal of charges.--The charges against any
15 defendant adjudicated incompetent to proceed due to the
16 defendant's mental illness shall be dismissed without
17 prejudice to the state if the defendant remains incompetent to
18 proceed 5 years after such determination, unless the court in
19 its order specifies its reasons for believing that the
20 defendant will become competent to proceed within the
21 foreseeable future and specifies the time within which the
22 defendant is expected to become competent to proceed. The
23 charges against the defendant are dismissed without prejudice
24 to the state to refile the charges should the defendant be
25 declared competent to proceed in the future.

26 Section 14. Section 916.15, Florida Statutes, is
27 amended to read:

28 916.15 Involuntary commitment of defendant adjudicated
29 not guilty by reason of insanity.--

30 (1) The determination of whether a defendant is not
31 guilty by reason of insanity shall be determined in accordance

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1 with Rule 3.217, Florida Rules of Criminal Procedure.

2 (2)~~(1)~~ A defendant who is acquitted of criminal
3 charges because of a finding of not guilty by reason of
4 insanity may be involuntarily committed pursuant to such
5 finding if the defendant is mentally ill and, because of the
6 illness, is manifestly dangerous to himself or herself or
7 others.

8 (3)~~(2)~~ Every defendant acquitted of criminal charges
9 by reason of insanity and found to meet the criteria for
10 involuntary commitment may be committed and treated in
11 accordance with the provisions of this section and the
12 applicable Florida Rules of Criminal Procedure. The
13 department shall admit a defendant so adjudicated to an
14 appropriate facility or program for treatment and shall retain
15 and treat such defendant. No later than 6 months after the
16 date of admission, prior to the end of any period of extended
17 commitment, or at any time the administrator or designee shall
18 have determined that the defendant no longer meets the
19 criteria for continued commitment placement, the administrator
20 or designee shall file a report with the court pursuant to the
21 applicable Florida Rules of Criminal Procedure.

22 (4)~~(3)~~ In all proceedings under this section
23 ~~subsection~~, both the defendant and the state shall have the
24 right to a hearing before the committing court. Evidence at
25 such hearing may be presented by the hospital administrator or
26 the administrator's designee as well as by the state and the
27 defendant. The defendant shall have the right to counsel at
28 any such hearing. In the event that a defendant is determined
29 to be indigent pursuant to s. 27.52, the public defender shall
30 represent the defendant. The parties shall have access to the
31 defendant's records at the treating facilities and may

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1 interview or depose personnel who have had contact with the
2 defendant at the treating facilities.

3 Section 15. Section 916.16, Florida Statutes, is
4 amended to read:

5 916.16 Jurisdiction of committing court.--

6 (1) The committing court shall retain jurisdiction
7 ~~over in the case of~~ any defendant involuntarily committed due
8 to a determination of incompetency ~~hospitalized as incompetent~~
9 to proceed due to a mental illness or ~~because of~~ a finding of
10 not guilty by reason of insanity pursuant to this chapter. The
11 ~~No such~~ defendant may not be released except by order of the
12 committing court. An ~~The~~ administrative hearing examiner does
13 not ~~shall~~ have ~~no~~ jurisdiction to determine issues of
14 continuing commitment ~~hospitalization~~ or release of any
15 defendant involuntarily committed ~~admitted~~ pursuant to this
16 chapter.

17 (2) The committing court shall retain jurisdiction in
18 the case of any defendant placed on conditional release
19 pursuant to s. 916.17. ~~No~~ Such defendant may not be released
20 from the conditions of release except by order of the
21 committing court.

22 Section 16. Section 916.17, Florida Statutes, is
23 amended to read:

24 916.17 Conditional release.--

25 (1) Except for an inmate also currently serving a
26 prison sentence, ~~The committing court may order a conditional~~
27 ~~release of any defendant who has been found to be incompetent~~
28 ~~to proceed or not guilty by reason of insanity, based on an~~
29 ~~approved plan for providing appropriate outpatient care and~~
30 ~~treatment.~~ the committing court may order a conditional
31 release of any defendant in lieu of an involuntary commitment

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1 to a facility pursuant to s. 916.13 or s. 916.15 based upon an
2 approved plan for providing appropriate outpatient care and
3 treatment. Upon a recommendation that outpatient treatment of
4 the defendant is appropriate, a written plan for outpatient
5 treatment, including recommendations from qualified
6 professionals, must be filed with the court, with copies to
7 all parties. Such a plan may also be submitted by the
8 defendant and filed with the court with copies to all parties.
9 The plan shall include:

10 (a) Special provisions for residential care or
11 adequate supervision of the defendant.

12 (b) Provisions for outpatient mental health services.

13 (c) If appropriate, recommendations for auxiliary
14 services such as vocational training, educational services, or
15 special medical care.

16

17 In its order of conditional release, the court shall specify
18 the conditions of release based upon the release plan and
19 shall direct the appropriate agencies or persons to submit
20 periodic reports to the court regarding the defendant's
21 compliance with the conditions of the release and progress in
22 treatment, with copies to all parties.

23 (2) Upon the filing of an affidavit or statement under
24 oath by any person that the defendant has failed to comply
25 with the conditions of release, that the defendant's condition
26 has deteriorated to the point that inpatient care is required,
27 or that the release conditions should be modified, the court
28 shall hold a hearing within 7 days after receipt of the
29 affidavit or statement under oath. After the hearing, the
30 court may modify the release conditions. The court may also
31 order that the defendant be returned to the department if it

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1 is found, after the appointment and report of experts, that
2 the person meets the criteria for involuntary commitment under
3 s. 916.13 or s. 916.15 ~~treatment~~.

4 (3) If at any time it is determined after a hearing
5 that the defendant who has been conditionally released under
6 subsection (1) no longer requires court-supervised followup
7 care, the court shall terminate its jurisdiction in the cause
8 and discharge the defendant.

9 Section 17. Section 916.301, Florida Statutes, is
10 amended to read:

11 916.301 Appointment of experts.--

12 (1) All evaluations ordered by the court under this
13 part must be conducted by qualified experts who have expertise
14 in evaluating persons with retardation or autism. The agency
15 ~~department~~ shall maintain and provide the courts annually with
16 a list of available retardation and autism professionals who
17 are appropriately licensed and qualified to perform
18 evaluations of defendants alleged to be incompetent to proceed
19 due to retardation or autism. The courts may use professionals
20 from this list when appointing experts and ordering
21 evaluations under this part ~~for defendants suspected of being~~
22 ~~retarded or autistic.~~

23 (2) If a defendant's suspected mental condition is
24 retardation or autism, the court shall appoint a panel of
25 experts consisting of: ~~two experts, one of whom must be the~~
26 ~~developmental services program of the department, each of whom~~
27 ~~will evaluate whether the defendant meets the definition of~~
28 ~~retardation or autism and, if so, whether the defendant is~~
29 ~~competent to proceed.~~

30 ~~(a)(3)~~ At least one, or at the request of any party,
31 two experts ~~the court may appoint one additional expert to~~

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1 evaluate ~~the defendant. The expert appointed by the court will~~
2 ~~evaluate~~ whether the defendant meets the definition of
3 retardation or autism and, if so, whether the defendant is
4 competent to proceed.

5 ~~(b)(4) The developmental services program shall select~~
6 A psychologist selected by the agency who is licensed or
7 authorized by law to practice in this state, with experience
8 in evaluating persons suspected of having retardation or
9 autism, and a social service professional, with experience in
10 working with persons with retardation or autism ~~to evaluate~~
11 ~~the defendant.~~

12 1.(a) The psychologist shall evaluate whether the
13 defendant meets the definition of retardation or autism and,
14 if so, whether the defendant is incompetent to proceed due to
15 retardation or autism.

16 2.(b) The social service professional shall provide a
17 social and developmental history of the defendant.

18 ~~(5) All evaluations ordered by the court must be from~~
19 ~~qualified experts with experience in evaluating persons with~~
20 ~~retardation or autism.~~

21 (3)(6) The panel of experts may examine the defendant
22 in jail, in another appropriate local facility, in a facility
23 of the Department of Corrections, or on an outpatient basis.

24 (4)(7) Experts ~~Expert witnesses~~ appointed by the court
25 to evaluate the mental condition of a defendant in a criminal
26 case shall be allowed reasonable fees for services rendered as
27 evaluators and as witnesses, which shall be paid by the court.
28 State employees shall be paid expenses pursuant to s. 112.061.
29 The fees shall be taxed as costs in the case. In order for the
30 experts to be paid for the services rendered, the reports and
31 testimony must explicitly address each of the factors and

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1 follow the procedures set out in this chapter and in the
2 Florida Rules of Criminal Procedure.

3 Section 18. Subsections (1) and (2) of section
4 916.3012, Florida Statutes, are amended to read:

5 916.3012 Mental competence to proceed.--

6 (1) A defendant whose suspected mental condition is
7 retardation or autism is incompetent to proceed within the
8 meaning of this chapter if the defendant does not have
9 sufficient present ability to consult with the defendant's
10 lawyer with a reasonable degree of rational understanding or
11 if the defendant has no rational, as well as factual,
12 understanding of the proceedings against the defendant.

13 (2) ~~The Experts in retardation or autism, appointed~~
14 ~~pursuant to s. 916.301, shall first consider whether the~~
15 ~~defendant meets the definition of retardation or autism and,~~
16 ~~if so, consider the factors related to the issue of whether~~
17 ~~the defendant meets the criteria for competence to proceed as~~
18 ~~described in subsection(1); that is, whether the defendant has~~
19 ~~sufficient present ability to consult with counsel with a~~
20 ~~reasonable degree of rational understanding and whether the~~
21 ~~defendant has a rational, as well as factual, understanding of~~
22 ~~the pending proceedings.~~

23 Section 19. Section 916.302, Florida Statutes, is
24 amended to read:

25 916.302 Involuntary commitment of defendant determined
26 to be incompetent to proceed ~~due to retardation or autism.--~~

27 (1) CRITERIA.--Every defendant who is charged with a
28 felony and who is adjudicated ~~found to be~~ incompetent to
29 proceed due to retardation or autism, ~~pursuant to this chapter~~
30 ~~and the applicable Florida Rules of Criminal Procedure,~~ may be
31 involuntarily committed for training upon a finding by the

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1 court of clear and convincing evidence that:

2 (a) The defendant has retardation or autism ~~is~~
3 ~~retarded or autistic~~;

4 (b) There is a substantial likelihood that in the near
5 future the defendant will inflict serious bodily harm on
6 himself or herself or another person, as evidenced by recent
7 behavior causing, attempting, or threatening such harm;

8 (c) All available, less restrictive alternatives,
9 including services provided in community residential
10 facilities or other community settings, which would offer an
11 opportunity for improvement of the condition have been judged
12 to be inappropriate; and

13 (d) There is a substantial probability that the
14 retardation or autism causing the defendant's incompetence
15 will respond to training and the defendant will regain
16 competency to proceed in the reasonably foreseeable future.

17 (2) ADMISSION TO A FACILITY.--

18 (a) A defendant who has been charged with a felony and
19 who is found to be incompetent to proceed due to retardation
20 or autism, and who meets the criteria for involuntary
21 commitment to the agency ~~department~~ under the provisions of
22 this chapter, shall be committed to the agency ~~department~~, and
23 the agency ~~department~~ shall retain and provide appropriate
24 training for ~~serve~~ the defendant. No later than 6 months after
25 the date of admission or at the end of any period of extended
26 commitment or at any time the administrator or designee shall
27 have determined that the defendant has regained competency to
28 proceed or no longer meets the criteria for continued
29 commitment, the administrator or designee shall file a report
30 with the court pursuant to this chapter and the applicable
31 Florida Rules of Criminal Procedure.

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1 (b) A defendant determined to be incompetent to
2 proceed due to retardation or autism may be ordered by a
3 circuit court into a forensic ~~secure~~ facility designated by
4 the agency ~~department~~ for retarded or autistic defendants.

5 (c) The agency ~~department~~ may transfer a defendant
6 from a designated forensic ~~secure~~ facility to another
7 designated forensic ~~secure~~ facility and must notify the court
8 of the transfer within 30 days after the transfer is
9 completed.

10 (d) The agency ~~department~~ may not transfer a defendant
11 from a designated forensic ~~secure~~ facility to a civil
12 ~~nonsecure~~ facility without first notifying the court, and all
13 parties, 30 days before the proposed transfer. If the court
14 objects to the proposed transfer ~~to a nonsecure facility~~, it
15 must send its written objection to the agency ~~department~~. The
16 agency ~~department~~ may transfer the defendant unless it
17 receives the written objection from the court within 30 days
18 after the court's receipt of the notice of the proposed
19 transfer.

20 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

21 (a) If a defendant is both retarded or autistic and
22 mentally ill, evaluations must address which condition is
23 primarily affecting the defendant's competency to proceed.
24 Referral of the defendant should be made to a civil or
25 forensic ~~the~~ facility ~~or program~~ most appropriate to address
26 the symptoms which are the cause of the defendant's
27 incompetence.

28 (b) Transfer from one civil or forensic facility ~~or~~
29 ~~program~~ to another civil or forensic facility ~~or program~~ may
30 occur when, in the department's and agency's judgment, it is
31 in the defendant's best treatment or training interests. The

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1 department and agency shall submit an evaluation and
2 justification for the transfer to the court. The court may
3 consult with an outside expert if necessary. Transfer will
4 require an amended order from the committing court.

5 Section 20. Section 916.3025, Florida Statutes, is
6 amended to read:

7 916.3025 Jurisdiction of committing court.--

8 (1) The committing court shall retain jurisdiction in
9 the case of any defendant found to be incompetent to proceed
10 due to retardation or autism and ordered into a forensic
11 ~~secure~~ facility designated by the agency ~~department~~ for
12 retarded or autistic defendants. A ~~No~~ defendant may not be
13 released except by the order of the committing court. An
14 administrative hearing examiner does not have jurisdiction to
15 determine issues of continuing commitment or release of any
16 defendant involuntarily committed pursuant to this chapter.

17 (2) The committing court shall retain jurisdiction in
18 the case of any defendant placed on conditional release
19 pursuant to s. 916.304. ~~No~~ Such defendant may not be released
20 from the conditions of release except by order of the
21 committing court.

22 (3) The committing court shall consider a ~~the~~ petition
23 to involuntarily admit a defendant whose charges have been
24 dismissed to residential services provided by the agency
25 ~~department's developmental services program a person whose~~
26 ~~charges have been dismissed~~, and, when applicable, to continue
27 secure placement of such person as provided in s. 916.303. The
28 committing court shall retain jurisdiction over such person so
29 long as he or she remains in secure placement or is on
30 conditional release as provided in s. 916.304. However, upon
31 request the court may transfer continuing jurisdiction to the

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1 court in the circuit where the defendant resides. The
2 defendant may not be released from an order for secure
3 placement except by order of the court.

4 Section 21. Section 916.303, Florida Statutes, is
5 amended to read:

6 916.303 Determination of incompetency due to
7 retardation or autism; dismissal of charges.--

8 (1) The charges against any defendant found to be
9 incompetent to proceed due to retardation or autism shall be
10 dismissed without prejudice to the state if the defendant
11 remains incompetent to proceed within a reasonable time after
12 such determination, not to exceed 2 years, unless the court in
13 its order specifies its reasons for believing that the
14 defendant will become competent to proceed within the
15 foreseeable future and specifies the time within which the
16 defendant is expected to become competent to proceed. The
17 charges may be refiled by the state if ~~against the defendant~~
18 ~~are dismissed without prejudice to the state to refile the~~
19 ~~charges should the defendant~~ is ~~be~~ declared competent to
20 proceed in the future.

21 (2)(a) If the charges are dismissed and if the
22 defendant is considered to lack sufficient capacity to give
23 express and informed consent to a voluntary application for
24 services and lacks the basic survival and self-care skills to
25 provide for his or her well-being or is likely to physically
26 injure himself or herself or others if allowed to remain at
27 liberty, the agency department, the state attorney, or the
28 defendant's attorney shall ~~may~~ apply to the committing court
29 to involuntarily admit the defendant to residential services
30 pursuant to s. 393.11.

31 (3)(b) If the defendant is considered to need

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1 involuntary residential services for reasons described in
2 subsection (2) ~~under s. 393.11~~ and, further, there is a
3 substantial likelihood that the defendant will injure another
4 person or continues to present a danger of escape, and all
5 available less restrictive alternatives, including services in
6 community residential facilities or other community settings,
7 which would offer an opportunity for improvement of the
8 condition have been judged to be inappropriate, ~~then the~~
9 ~~agency person or entity filing the petition under s. 393.11,~~
10 the state attorney, or the defendant's counsel may request
11 ~~the petitioning commission, or the department may also~~
12 ~~petition~~ the committing court to continue the defendant's
13 placement in a secure facility ~~or program~~ pursuant to this
14 ~~part section~~. Any placement so continued under this subsection
15 must be ~~defendant involuntarily admitted under this paragraph~~
16 ~~shall have his or her status~~ reviewed by the court at least
17 annually at a hearing. The annual review and hearing shall
18 determine whether the defendant continues to meet the criteria
19 described in this subsection ~~for involuntary residential~~
20 ~~services~~ and, if so, whether the defendant still requires
21 involuntary placement in a secure facility or program ~~because~~
22 ~~the court finds that the defendant is likely to physically~~
23 ~~injure others as specified in s. 393.11~~ and whether the
24 defendant is receiving adequate care, treatment, habilitation,
25 and rehabilitation, including psychotropic medication and
26 behavioral programming. Notice of the annual review and
27 review hearing shall be given to the state attorney and ~~to the~~
28 defendant's attorney. In no instance may a defendant's
29 placement in a secure facility or program exceed the maximum
30 sentence for the crime for which the defendant was charged.

Section 22. Section 916.304, Florida Statutes, is

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1 amended to read:

2 916.304 Conditional release.--

3 (1) Except for an inmate also currently serving a
4 prison sentence, the committing court may order a conditional
5 release of any defendant who has been found to be incompetent
6 to proceed due to retardation or autism, based on an approved
7 plan for providing ~~continuing~~ community-based training. The
8 committing criminal court may order a conditional release of
9 any defendant to a civil facility in lieu of an involuntary
10 commitment to a forensic facility pursuant to s. 916.302. Upon
11 a recommendation that community-based training for the
12 defendant is appropriate, a written plan for community-based
13 training, including recommendations from qualified
14 professionals, may be filed with the court, with copies to all
15 parties. Such a plan may also be submitted by the defendant
16 and filed with the court, with copies to all parties. The plan
17 must ~~shall~~ include:

18 (a) Special provisions for residential care and
19 adequate supervision of the defendant, including recommended
20 location of placement.

21 (b) Recommendations for auxiliary services such as
22 vocational training, psychological training, educational
23 services, leisure services, and special medical care.

24

25 In its order of conditional release, the court shall specify
26 the conditions of release based upon the release plan and
27 shall direct the appropriate agencies or persons to submit
28 periodic reports to the courts regarding the defendant's
29 compliance with the conditions of the release and progress in
30 training, with copies to all parties.

31 (2) Upon the filing of an affidavit or statement under

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1 oath by any person that the defendant has failed to comply
2 with the conditions of release, that the defendant's condition
3 has deteriorated, or that the release conditions should be
4 modified, the court shall hold a hearing within 7 days after
5 receipt of the affidavit or statement under oath. With notice
6 to the court, the agency may detain a defendant in a forensic
7 facility until the hearing occurs. After the hearing, the
8 court may modify the release conditions. The court may also
9 order that the defendant be placed into more appropriate
10 programs for further training or may order the defendant to be
11 committed ~~returned to a forensic facility involuntary~~
12 ~~residential services of the department~~ if it is found, after
13 the appointment and report of experts, that the defendant
14 meets the criteria for placement in a forensic facility
15 ~~involuntary residential services.~~

16 (3) If at any time it is determined after a hearing
17 that the defendant conditionally released under subsection (1)
18 no longer requires court-supervised followup care, the court
19 shall terminate its jurisdiction in the cause and discharge
20 the defendant.

21 Section 23. Section 921.137, Florida Statutes, is
22 amended to read:

23 921.137 Imposition of the death sentence upon a
24 ~~mentally retarded~~ defendant with retardation prohibited.--

25 (1) As used in this section, the term "mental
26 retardation" means significantly subaverage general
27 intellectual functioning existing concurrently with deficits
28 in adaptive behavior and manifested during the period from
29 conception to age 18. The term "significantly subaverage
30 general intellectual functioning," for the purpose of this
31 section, means performance that is two or more standard

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1 deviations from the mean score on a standardized intelligence
2 test specified in the rules of the Agency for Persons with
3 Disabilities ~~Department of Children and Family Services~~. The
4 term "adaptive behavior," for the purpose of this definition,
5 means the effectiveness or degree with which an individual
6 meets the standards of personal independence and social
7 responsibility expected of his or her age, cultural group, and
8 community. The Agency for Persons with Disabilities ~~Department~~
9 ~~of Children and Family Services~~ shall adopt rules to specify
10 the standardized intelligence tests as provided in this
11 subsection.

12 (2) A sentence of death may not be imposed upon a
13 defendant convicted of a capital felony if it is determined in
14 accordance with this section that the defendant has mental
15 retardation.

16 (3) A defendant charged with a capital felony who
17 intends to raise mental retardation as a bar to the death
18 sentence must give notice of such intention in accordance with
19 the rules of court governing notices of intent to offer expert
20 testimony regarding mental health mitigation during the
21 penalty phase of a capital trial.

22 (4) After a defendant who has given notice of his or
23 her intention to raise mental retardation as a bar to the
24 death sentence is convicted of a capital felony and an
25 advisory jury has returned a recommended sentence of death,
26 the defendant may file a motion to determine whether the
27 defendant has mental retardation. Upon receipt of the motion,
28 the court shall appoint two experts in the field of mental
29 retardation who shall evaluate the defendant and report their
30 findings to the court and all interested parties prior to the
31 final sentencing hearing. Notwithstanding s. 921.141 or s.

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1 921.142, the final sentencing hearing shall be held without a
2 jury. At the final sentencing hearing, the court shall
3 consider the findings of the court-appointed experts and
4 consider the findings of any other expert which is offered by
5 the state or the defense on the issue of whether the defendant
6 has mental retardation. If the court finds, by clear and
7 convincing evidence, that the defendant has mental retardation
8 as defined in subsection (1), the court may not impose a
9 sentence of death and shall enter a written order that sets
10 forth with specificity the findings in support of the
11 determination.

12 (5) If a defendant waives his or her right to a
13 recommended sentence by an advisory jury following a plea of
14 guilt or nolo contendere to a capital felony and adjudication
15 of guilt by the court, or following a jury finding of guilt of
16 a capital felony, upon acceptance of the waiver by the court,
17 a defendant who has given notice as required in subsection (3)
18 may file a motion for a determination of mental retardation.
19 Upon granting the motion, the court shall proceed as provided
20 in subsection (4).

21 (6) If, following a recommendation by an advisory jury
22 that the defendant be sentenced to life imprisonment, the
23 state intends to request the court to order that the defendant
24 be sentenced to death, the state must inform the defendant of
25 such request if the defendant has notified the court of his or
26 her intent to raise mental retardation as a bar to the death
27 sentence. After receipt of the notice from the state, the
28 defendant may file a motion requesting a determination by the
29 court of whether the defendant has mental retardation. Upon
30 granting the motion, the court shall proceed as provided in
31 subsection (4).

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(7) The state may appeal, pursuant to s. 924.07, a determination of mental retardation made under subsection (4).

(8) This section does not apply to a defendant who was sentenced to death prior to the effective date of this act.

Section 24. Paragraphs (d), (e), (g), and (h) of subsection (1), subsections (2), (3), and (4), paragraph (b) of subsection (5), and paragraph (a) of subsection (6) of section 985.223, Florida Statutes, are amended to read:

985.223 Incompetency in juvenile delinquency cases.--

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities ~~Developmental Disabilities Program Office within the Department of Children and Family Services~~ to examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

(g) Immediately upon the filing of the court order finding a child incompetent to proceed, the clerk of the court

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1 shall notify the Department of Children and Family Services
2 and the Agency for Persons with Disabilities and fax or hand
3 deliver to the department and to the agency ~~of Children and~~
4 ~~Family Services~~ a referral packet that ~~which~~ includes, at a
5 minimum, the court order, the charging documents, the
6 petition, and the court-appointed evaluator's reports.

7 (h) After placement of the child in the appropriate
8 setting, the Department of Children and Family Services in
9 consultation with the Agency for Persons with Disabilities, as
10 appropriate, must, within 30 days after placement of ~~the~~
11 ~~Department of Children and Family Services~~ places the child,
12 prepare and submit to the court a treatment or training plan
13 for the child's restoration of competency. A copy of the
14 ~~treatment~~ plan must be served upon the child's attorney, the
15 state attorney, and the attorneys representing the Department
16 of Juvenile Justice.

17 (2) A child ~~who is mentally ill or retarded,~~ who is
18 adjudicated incompetent to proceed, and who has committed a
19 delinquent act or violation of law, either of which would be a
20 felony if committed by an adult, must be committed to the
21 Department of Children and Family Services for treatment or
22 training. A child who has been adjudicated incompetent to
23 proceed because of age or immaturity, or for any reason other
24 than for mental illness or retardation or autism, must not be
25 committed to the department or to the Department of Children
26 and Family Services for restoration-of-competency treatment or
27 training services. For purposes of this section, a child who
28 has committed a delinquent act or violation of law, either of
29 which would be a misdemeanor if committed by an adult, may not
30 be committed to the department or to the Department of
31 Children and Family Services for restoration-of-competency

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1 treatment or training services.

2 (3) If the court finds that a child has mental
3 illness, mental retardation, or autism ~~is mentally ill or~~
4 ~~retarded~~ and adjudicates the child incompetent to proceed, the
5 court must also determine whether the child meets the criteria
6 for secure placement. A child may be placed in a secure
7 facility or program if the court makes a finding by clear and
8 convincing evidence that:

9 (a) The child has mental illness ~~is mentally ill~~ and
10 because of the mental illness; or the child has mental
11 retardation or autism ~~is mentally retarded~~ and because of the
12 mental retardation or autism:

13 1. The child is manifestly incapable of surviving with
14 the help of willing and responsible family or friends,
15 including available alternative services, and without
16 treatment or training the child is likely to either suffer
17 from neglect or refuse to care for self, and such neglect or
18 refusal poses a real and present threat of substantial harm to
19 the child's well-being; or

20 2. There is a substantial likelihood that in the near
21 future the child will inflict serious bodily harm on self or
22 others, as evidenced by recent behavior causing, attempting,
23 or threatening such harm; and

24 (b) All available less restrictive alternatives,
25 including treatment or training in community residential
26 facilities or community settings which would offer an
27 opportunity for improvement of the child's condition, are
28 inappropriate.

29 (4) A child who is determined to have mental illness,
30 mental retardation, or autism ~~be mentally ill or retarded~~, who
31 has been adjudicated incompetent to proceed, and who meets the

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1 criteria set forth in subsection (3)⁷ must be committed to the
2 Department of Children and Family Services⁷ and receive
3 treatment or training ~~the Department of Children and Family~~
4 ~~Services must treat or train the child~~ in a secure facility or
5 program that ~~which~~ is the least restrictive alternative
6 consistent with public safety. Any placement of a child to a
7 secure residential program must be separate from adult
8 forensic programs. If the child attains competency, then
9 custody, case management, and supervision of the child will be
10 transferred to the department in order to continue delinquency
11 proceedings; however, the court retains authority to order the
12 Department of Children and Family Services to provide
13 continued treatment or training to maintain competency.

14 (a) A child adjudicated incompetent due to mental
15 retardation or autism may be ordered into a secure program or
16 facility designated by the Department of Children and Family
17 Services for ~~retarded~~ children with mental retardation or
18 autism.

19 (b) A child adjudicated incompetent due to mental
20 illness may be ordered into a secure program or facility
21 designated by the Department of Children and Family Services
22 for mentally ill children.

23 (c) Whenever a child is placed in a secure residential
24 facility, the department will provide transportation to the
25 secure residential facility for admission and from the secure
26 residential facility upon discharge.

27 (d) The purpose of the treatment or training is the
28 restoration of the child's competency to proceed.

29 (e) The service provider must file a written report
30 with the court pursuant to the applicable Florida Rules of
31 Juvenile Procedure not later than 6 months after the date of

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1 commitment, or at the end of any period of extended treatment
2 or training, and at any time the Department of Children and
3 Family Services, through its service provider determines the
4 child has attained competency or no longer meets the criteria
5 for secure placement, or at such shorter intervals as ordered
6 by the court. A copy of a written report evaluating the
7 child's competency must be filed by the provider with the
8 court and with the state attorney, the child's attorney, the
9 department, and the Department of Children and Family
10 Services.

11 (5)

12 (b) Whenever the provider files a report with the
13 court informing the court that the child will never become
14 competent to proceed, the Department of Children and Family
15 Services will develop a discharge plan for the child prior to
16 any hearing determining whether the child will ever become
17 competent to proceed and send the. ~~The Department of Children~~
18 ~~and Family Services must send the proposed discharge~~ plan to
19 the court, the state attorney, the child's attorney, and the
20 attorneys representing the Department of Juvenile Justice. The
21 provider will continue to provide services to the child until
22 the court issues the order finding the child will never become
23 competent to proceed.

24 (6)(a) If a child is determined to have mental
25 illness, mental retardation, or autism ~~be mentally ill or~~
26 ~~retarded~~ and is found to be incompetent to proceed but does
27 not meet the criteria set forth in subsection (3), the court
28 shall commit the child to the Department of Children and
29 Family Services and shall order the Department of Children and
30 Family Services to provide appropriate treatment and training
31 in the community. The purpose of the treatment or training is

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the restoration of the child's competency to proceed.

Section 25. Paragraph (b) of subsection (14) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.--

(14)

(b) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to exceed 20 years, with a private provider to finance, design, and construct a forensic treatment facility, as defined in s. 916.106(10) ~~s. 916.106(8)~~, of at least 200 beds and to operate all aspects of daily operations within the forensic treatment facility. The selected contractor is authorized to sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the forensic treatment facility. This paragraph expires July 1, 2006.

Section 26. Paragraph (r) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.--

(3) EXEMPTIONS.--Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(r) For beds in state mental health treatment facilities operated under s. 394.455(30) and state mental health forensic facilities operated under chapter 916 ~~s. 916.106(8)~~.

Section 27. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over

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1 their own procedures, including the maintenance, expunction,
 2 and correction of judicial records containing criminal history
 3 information to the extent such procedures are not inconsistent
 4 with the conditions, responsibilities, and duties established
 5 by this section. Any court of competent jurisdiction may order
 6 a criminal justice agency to expunge the criminal history
 7 record of a minor or an adult who complies with the
 8 requirements of this section. The court shall not order a
 9 criminal justice agency to expunge a criminal history record
 10 until the person seeking to expunge a criminal history record
 11 has applied for and received a certificate of eligibility for
 12 expunction pursuant to subsection (2). A criminal history
 13 record that relates to a violation of s. 393.135, s. 394.4593,
 14 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
 15 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
 16 s. 847.0145, s. 893.135, s. 916.1075, or a violation
 17 enumerated in s. 907.041 may not be expunged, without regard
 18 to whether adjudication was withheld, if the defendant was
 19 found guilty of or pled guilty or nolo contendere to the
 20 offense, or if the defendant, as a minor, was found to have
 21 committed, or pled guilty or nolo contendere to committing,
 22 the offense as a delinquent act. The court may only order
 23 expunction of a criminal history record pertaining to one
 24 arrest or one incident of alleged criminal activity, except as
 25 provided in this section. The court may, at its sole
 26 discretion, order the expunction of a criminal history record
 27 pertaining to more than one arrest if the additional arrests
 28 directly relate to the original arrest. If the court intends
 29 to order the expunction of records pertaining to such
 30 additional arrests, such intent must be specified in the
 31 order. A criminal justice agency may not expunge any record

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1 pertaining to such additional arrests if the order to expunge
2 does not articulate the intention of the court to expunge a
3 record pertaining to more than one arrest. This section does
4 not prevent the court from ordering the expunction of only a
5 portion of a criminal history record pertaining to one arrest
6 or one incident of alleged criminal activity. Notwithstanding
7 any law to the contrary, a criminal justice agency may comply
8 with laws, court orders, and official requests of other
9 jurisdictions relating to expunction, correction, or
10 confidential handling of criminal history records or
11 information derived therefrom. This section does not confer
12 any right to the expunction of any criminal history record,
13 and any request for expunction of a criminal history record
14 may be denied at the sole discretion of the court.

15 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
16 criminal history record of a minor or an adult which is
17 ordered expunged by a court of competent jurisdiction pursuant
18 to this section must be physically destroyed or obliterated by
19 any criminal justice agency having custody of such record;
20 except that any criminal history record in the custody of the
21 department must be retained in all cases. A criminal history
22 record ordered expunged that is retained by the department is
23 confidential and exempt from the provisions of s. 119.07(1)
24 and s. 24(a), Art. I of the State Constitution and not
25 available to any person or entity except upon order of a court
26 of competent jurisdiction. A criminal justice agency may
27 retain a notation indicating compliance with an order to
28 expunge.

29 (a) The person who is the subject of a criminal
30 history record that is expunged under this section or under
31 other provisions of law, including former s. 893.14, former s.

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901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s.

110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),

chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 28. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such

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1 procedures are not inconsistent with the conditions,
2 responsibilities, and duties established by this section. Any
3 court of competent jurisdiction may order a criminal justice
4 agency to seal the criminal history record of a minor or an
5 adult who complies with the requirements of this section. The
6 court shall not order a criminal justice agency to seal a
7 criminal history record until the person seeking to seal a
8 criminal history record has applied for and received a
9 certificate of eligibility for sealing pursuant to subsection
10 (2). A criminal history record that relates to a violation of
11 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
12 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
13 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
14 916.1075, or a violation enumerated in s. 907.041 may not be
15 sealed, without regard to whether adjudication was withheld,
16 if the defendant was found guilty of or pled guilty or nolo
17 contendere to the offense, or if the defendant, as a minor,
18 was found to have committed or pled guilty or nolo contendere
19 to committing the offense as a delinquent act. The court may
20 only order sealing of a criminal history record pertaining to
21 one arrest or one incident of alleged criminal activity,
22 except as provided in this section. The court may, at its sole
23 discretion, order the sealing of a criminal history record
24 pertaining to more than one arrest if the additional arrests
25 directly relate to the original arrest. If the court intends
26 to order the sealing of records pertaining to such additional
27 arrests, such intent must be specified in the order. A
28 criminal justice agency may not seal any record pertaining to
29 such additional arrests if the order to seal does not
30 articulate the intention of the court to seal records
31 pertaining to more than one arrest. This section does not

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1 prevent the court from ordering the sealing of only a portion
 2 of a criminal history record pertaining to one arrest or one
 3 incident of alleged criminal activity. Notwithstanding any law
 4 to the contrary, a criminal justice agency may comply with
 5 laws, court orders, and official requests of other
 6 jurisdictions relating to sealing, correction, or confidential
 7 handling of criminal history records or information derived
 8 therefrom. This section does not confer any right to the
 9 sealing of any criminal history record, and any request for
 10 sealing a criminal history record may be denied at the sole
 11 discretion of the court.

12 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
 13 criminal history record of a minor or an adult which is
 14 ordered sealed by a court of competent jurisdiction pursuant
 15 to this section is confidential and exempt from the provisions
 16 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 17 and is available only to the person who is the subject of the
 18 record, to the subject's attorney, to criminal justice
 19 agencies for their respective criminal justice purposes, or to
 20 those entities set forth in subparagraphs (a)1., 4., 5., and
 21 6. for their respective licensing and employment purposes.

22 (a) The subject of a criminal history record sealed
 23 under this section or under other provisions of law, including
 24 former s. 893.14, former s. 901.33, and former s. 943.058, may
 25 lawfully deny or fail to acknowledge the arrests covered by
 26 the sealed record, except when the subject of the record:

- 27 1. Is a candidate for employment with a criminal
 28 justice agency;
- 29 2. Is a defendant in a criminal prosecution;
- 30 3. Concurrently or subsequently petitions for relief
 31 under this section or s. 943.0585;

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1 4. Is a candidate for admission to The Florida Bar;

2 5. Is seeking to be employed or licensed by or to
3 contract with the Department of Children and Family Services
4 or the Department of Juvenile Justice or to be employed or
5 used by such contractor or licensee in a sensitive position
6 having direct contact with children, the developmentally
7 disabled, the aged, or the elderly as provided in s.
8 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
9 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
10 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or
11 chapter 400; or

12 6. Is seeking to be employed or licensed by the
13 Department of Education, any district school board, any
14 university laboratory school, any charter school, any private
15 or parochial school, or any local governmental entity that
16 licenses child care facilities.

17 Section 29. This act shall take effect upon becoming a
18 law.

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